ZULKIFFLEE BIN HJ. HASSAN v. PUBLIC PROSECUTOR

[A. Cr. J. (Zakaria Yatim J.) May 6, 1987]

[Kuala Lumpur – Federal Territory Criminal Application No: CR 54-9-87]

Criminal Law and Procedure – Bail – Application for reduction – Consideration and circumstances.

In this application the accused sought for an order of Court that the bail set for him in the sum of $1,000,000. by the President of the Sessions Court to be reduced to a lesser sum. The accused was charged with an offence under section 409 of the Penal Code involving a sum of $6.7 million. He claimed trial to the charges and the President allowed him bail in the said sum and two sureties and his passport was also impounded. The question before the Court was whether bail of $1 million and two sureties was adequate or too excessive in the light of the circumstances of the case.

Held: (1) the requirements as to bail are merely to secure the attendance of the accused at the trial. The purpose of bail is to secure his appearance on a certain date to answer the charges against him. Bail is not intended to be punitive and excessive bail ought not to be required;

(2) in the instant case, the bail of $1 million had the effect of punishing the applicant before he was proved guilty of the charges aginst him;

(3) in the circumstances of the case the bail of $1 million and two sureties should be reduced to a sum of $200,000.00 and two sureties.

Case referred to:

(1) *Reg.* v. *Rose* (1898) 18 Cox C.C. 717; [1895-9] All E.R. Rep. 350.

CRIMINAL APPLICATION.

Muhammad Shafee Abdullah for the applicant.

Gooi Soon Seng (Deputy Public Prosecutor) for the respondent.

Zakaria Yatim J. (delivering oral Judgment): This is an application by the accused by notice of motion for an order of the Court that the bail set for the applicant in the sum of $1,000,000.00 by the President, Sessions Court, be reduced to a lesser sum or for such other order as this Court may deem fit.

The applicant was charged in the Sessions Court with an offence under section 409 of the Penal Code. There are seven charges against him under the same section involving a total sum of $6.7 million. Another person, Ahmad Shukri was charged with abetting the applicant in committing the offences as stated in the seven charges. Ahmad Shukri is also charged in the alternative with cheating punishable under section 420 of the Penal Code in respect of each of the abetting charges. After the applicant has been charged he claimed trial to all the seven charges. The President allowed him bail in the sum of $1 million and two sureties. His passport was also impounded.

The question is whether bail of $1 million and two sureties is adequate or too excessive in the light of the circumstances of this case. The law regarding bail is clear: The requirements as to bail are merely to secure the attendance of the prisoner at the trial (*Reg.* v. *Rose*[1]). The purpose of bail is to secure the appearance of the accused on a certain date to answer the charges against him. Bail is not intended to be punitive and excessive bail ought not to be required. *Mallal's Criminal Procedure*, 4th Edn. Page 548.

It appears to me that the bail of $1 million in the instant case has the effect of punishing the applicant before he is proved guilty of the charges against him. This is evident from the fact that he is unable to find the two sureties to secure such bail. As a result, he has been on remand in prison from April 21, 1987, to date. The amount of money fixed by the Court as bail is not the sole consideration to ensure the attendance of an accused person in Court. A wealthy accused may be too happy to deposit a million dollars in court and then abscond from the country and does not attend the trial. On the other hand, a person of meagre means, who cannot raise bail of $1 million may be kept in the remand prison for months before his trial and in the end he may be found not guilty.

In considering the amount of bail the court has to take into consideration the circumstances of each particular case. In the instant case, the applicant has been co-operative with the police in their investigation. There is no evidence that he has benefited from the $6.7 million. On the other hand, Ahmad Shukri seems to have benefited from the alleged illegal transactions. This can be inferred from the seven alternative charges framed against him.

Despite the fact that Ahmad Shukri is facing seven charges for abetting the applicant under section 409, and despite the fact that he is also facing seven alternative charges under section 420 of the Penal Code, he was allowed bail of $200,000.00 with two sureties. Mr. Gooi, in his submission, told

the court that the applicant is charged with seven charges of criminal breach of trust and each charge carries a maximum sentence of twenty years. According to him, considering the amount involved is $6.7 million, a bail of $1 million is not excessive.

It should be noted that although Ahmad Shukri is charged as an abettor, he too, faces a maximum sentence of twenty years' imprisonment under sections 109 and 409 of the Penal Code. If the President has granted Ahmad Shukri bail of $200,000.00, in my judgment it is only proper that the applicant, too, should be treated equally by the President in setting bail for him.

I accordingly order that the bail of $1 million and two sureties ordered by the President be reduced to a sum of $200,000.00 and two sureties. His international and restricted passports shall remain impounded with liberty to apply.

Order accordingly.

Solicitors: *Shafee & Co.*

LIM KEE TIAK v. LIM KEE TIAN

[O.C.J. (Mustapha Hussain J.) July 3, 1986]

[Seremban – Civil Suit No. 89 of 1985]

Practice and Procedure – Pleadings – Application for further and better particulars – Details to ensure clearness.

Trust – Pleadings must include creation of trust and properties included in trust.

In any pleading a certain amount of details are obviously necessary not only to ensure clearness but also to prevent suprise to the other party and to narrow down the real issues or points in dispute.

In this case, the defendant should give further and better particulars, not only of the creation of trust but also the properties included in the said trust.

CIVIL SUIT.

K. Gunaretnam for the plaintiff.
S.F. Leow for the defendant.

Cur. Adv. Vult.

Mustapha Hussain J.: The plaintiff is claiming as *administrator de bonis non* of the Estate of Chew Hwee (with aliases) who at the time of her death owned some lands. The defendant was the donee of a power of attorney and had after revocation by the death of the donor transferred the said lands to two persons and the transfers were done fraudulently, so alleged by the plaintiff.

In the defence, the defendant claims that the deceased Chew Hwee (with aliases) held the said lands in trust for the defendant who is the beneficial owner. The defendant did not state whether the trust was by deed or oral; simply "trust."

The plaintiff then applied for further and better particulars which was refused by the Senior Assistant Registrar and hence this appeal.

The principles underlying applications for further and better particulars are to be found under Functions of Particulars in any *White Book*. In any pleading a certain amount of details are obviously necessary not only to ensure clearness but also to prevent surprise to the other party and to narrow down the real issues or points in dispute.

In our case, the simple word "trust" is not that clear. It could mean oral, by deed or even constructive. Reviewing all the authorities, this Court is of the view that the defendant should give further and better particulars, not only of the creation of the trust but also the properties included in the said trust. Moreover there is nothing wrong in disclosing the particulars as it would save time and expense. It will, in no way at all, prejudice the defendant. On the other hand, it will provide clarity to the issues involved.

As such, I allow the appeal with costs here and before the Senior Assistant Registrar.

Appeal allowed.

Solicitors: *Sault & Co.; Arifin & Partners.*